

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5

PICERNE MILITARY HOUSING, LLC

Employer

and

Case 5-RC-15985

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 37, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

The issues in this proceeding are: (1) whether “maintenance supervisors” are supervisors within the meaning of the Act; (2) whether porters share a sufficient community of interest with maintenance technicians to be included in the petitioned-for unit; and (3) whether resident service specialists and/or relocation specialists share such a close community of interest with the maintenance technicians and maintenance supervisors such that they must be included in the bargaining unit. There is no history of collective bargaining.

The Petitioner seeks to represent all maintenance technicians and porters employed by the Employer at Fort Meade Military Housing, excluding all office clericals, supervisors, managers, and guards as defined by the Act. The Petitioner contends that: (1) the maintenance supervisors are supervisors within the meaning of the Act and should be excluded from the unit on that basis;<sup>1</sup> and (2) the resident service specialists and

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<sup>1</sup> The Petitioner does not contend maintenance supervisors should otherwise be excluded from the petitioned-for unit.

relocation specialists do not share a community of interest with the petitioned-for employees and should be excluded from the unit.<sup>2</sup>

The Employer argues that the petitioned-for unit of maintenance technicians and porters is not an appropriate unit. The Employer argues that a unit composed of all 5 classifications, including 5 maintenance supervisors, 26 maintenance technicians, 7 porters, 11 resident service specialists, and 5 relocation specialists, is the only appropriate unit for collective bargaining. Alternatively, the Employer argues that an appropriate unit would consist of maintenance supervisors, resident service specialists, and maintenance technicians, excluding porters and relocation specialists.

I have carefully considered the evidence and arguments presented by the parties at the hearing and in their briefs regarding these issues. As discussed below, I conclude that the evidence is insufficient to support a finding that maintenance supervisors are supervisors within the meaning of the Act. I further find that the petitioned-for unit of maintenance technicians and porters as well as the disputed maintenance supervisors, is an appropriate unit for bargaining. Additionally, I find that the resident service specialists and relocation specialists do not share such a close community of interest with the petitioned-for employees and the maintenance supervisors that they must be included in the unit. There are approximately thirty-eight employees in the unit I find appropriate.

The Employer presented one witness, Gayle V. Filo, Community Management Director, at the hearing. The Petitioner also presented one witness, Willie S. Brodie, maintenance technician, at the hearing.

### Background

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<sup>2</sup> At the hearing, the Petitioner stated its willingness to proceed to an election in any unit found appropriate.

The Employer provides property management of military housing for the United States Army at Fort Meade, Maryland. The Employer is responsible for maintaining and repairing homes that are occupied by resident service members, repairing the vacant homes for incoming service members, collecting rent, and resolving various resident issues.<sup>3</sup> There are over 3,000 homes for service members located throughout the Fort Meade base.

The Community Management Director, Gayle Filo, is charged with overall responsibility for the property management portion of the operations at Fort Meade. Next in line in the hierarchical structure are the Deputy Community Management Director, the Director of Maintenance, and the Assistant Director of Maintenance. Neither party seeks inclusion of any of the above positions within the bargaining unit.

With the exception of the relocation specialists discussed below, the remaining classifications of employees work within one of five designated neighborhoods, Potomac Place, Meuse Forest, Midway Commons, Heritage Park, and Normandy Bluffs. Each of the five neighborhoods has a Neighborhood Manager, who has overall responsibility for the operation of the homes within his respective neighborhood, and at least one Assistant Neighborhood Manager. Neither the Petitioner nor the Employer seeks inclusion of either classification in the bargaining unit.

Each neighborhood also has one maintenance supervisor and approximately five maintenance technicians. Although maintenance technicians receive work orders from the maintenance supervisors, the written job description of the maintenance technician job reveals that their supervisor is actually the Assistant Director Maintenance

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<sup>3</sup> The work that is performed by the Employer includes plumbing, electrical, heating, venting and air conditioning work, as well as the installation of various appliances.

Operations. Each neighborhood has one or two porters, who are general laborers. As is discussed more fully below, although porters receive work orders from maintenance supervisors, their supervisor, like that of the maintenance technicians, is the Assistant Director of Maintenance Operations. Each of the five neighborhoods has its own facility where its Neighborhood Manager, Assistant Neighborhood Manager, Maintenance Supervisors, and resident service specialists share office space. I note, however, that the record evidence shows that although maintenance supervisors have office space, they actually spend about 75 – 80 percent of their time working in the field, performing the same duties as maintenance technicians.

The other classification of employee at issue in this proceeding is the relocation specialist. Those five employees function separate and apart from the other classifications. The relocation specialists work out of a separate facility on the base and, according to their written job description, answer directly to a relocation manager.

#### The Field Operation

With respect to repairs and maintenance on homes that are currently occupied by service members, when resident service specialists receive phone calls, e-mails, and resident in-person notification of issues, they will first determine if the problem is a simple one that they can trouble-shoot themselves. If the issue is more complex, the resident service specialist generates a work order on the computer, which is then passed on to the maintenance supervisor, who will then delegate the task to a maintenance technician and sometimes to a porter, or perform the work himself.<sup>4</sup> Maintenance

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<sup>4</sup> Rarely, when maintenance supervisors are unavailable, and usually only in emergency situations, resident service specialists may contact maintenance technicians directly about a work order.

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supervisors perform the same tasks as maintenance technicians seventy-five to eighty percent of the time.

That delegation of work first occurs each morning between 8:00 a.m. and 8:15 a.m., when the maintenance supervisors hold meetings in their respective neighborhood offices with the maintenance technicians and porters. No other classifications of employees attend those daily morning meetings.<sup>5</sup> In making a decision as to the delegation of the work, the maintenance supervisors take into consideration the nature of the work and the skills of each maintenance technician to perform the work, which, for the most part, consists of plumbing, electrical, HVAC, and/or installation of appliances.

Although the porters are primarily responsible for the exterior conditions of the neighborhoods, including picking up trash, they are routinely called upon to assist the maintenance technicians carry heavy appliances/equipment to and from the residences. Although the record evidence demonstrates that porters predominantly perform the above-described tasks, there is also evidence that the porter will at times be required to perform light touch-up painting and plastering work.<sup>6</sup> Maintenance supervisors, maintenance technicians, and porters are the only employees who wear uniforms. In fact, they all wear the same uniform consisting of a navy blue shirt with the Employer's logo and name and a pair of navy blue pants. Maintenance supervisors, maintenance technicians, and porters attend weekly safety meetings with the Director of Maintenance and the Assistant Director of Maintenance.

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<sup>5</sup> The Community Manager Director, who does not work in a neighborhood office, testified that they ask the neighborhood teams to gather on a daily basis, at their discretion. The probative evidence is, that the daily meetings in the Midway Commons neighborhood do not include the Resident Service Specialists.

<sup>6</sup> The Employer subcontracts out the larger painting and plastering jobs.

When the assigned work orders are completed, the maintenance technicians report back to their neighborhood office with the completed work ticket.<sup>7</sup> At that time, the resident service specialist enters the data into a computer database and follows up the work with a “warm call” to the resident to assure that the work was satisfactorily completed. If the resident indicates that the work is not satisfactory, the resident specialist will generate yet another work order. In this event, either the resident service specialist or the maintenance supervisor also will visit the resident’s home personally to assess the problem and the nature of the resident’s continued complaint.

#### Maintenance Supervisors

Among the skills and qualifications necessary for a maintenance supervisor position are the following: a high school diploma; relevant trade certifications, preferably in HVAC/CFC and CAMT; over five years of property maintenance experience; competency in Microsoft Office programs; proven abilities in electrical, plumbing, appliance repair, carpentry, landscape maintenance, lock repair, construction and OSHA standards; strong interpersonal skills; and preferably an ability to read blueprints. Maintenance supervisors are paid an average of \$21.48 per hour.

As discussed above, maintenance supervisors delegate work to the maintenance technicians and porters. They also take part, along with the Assistant Director of Maintenance Operations and the Neighborhood Manager, in evaluating the work of maintenance technicians. Those evaluations are then passed up to the Community Management Director. Similarly, maintenance supervisors are responsible for notifying their superior when the maintenance technicians are not performing their jobs, or when

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<sup>7</sup> Although the complexity and duration of jobs vary, the maintenance technicians are required to check in mid-day with the neighborhood office, either to receive afternoon work orders, or to report about the progress of the work they are performing.

they have done something wrong. In that regard, the following testimony of Community Management Director Gayle Filo elicited during cross-examination by the Petitioner demonstrates that maintenance supervisors possess nothing more than a reportorial role with respect to any employee conduct that could potentially lead to discipline.<sup>8</sup>

Q. BY MR. SINGLETON: What would happen if he recommends something?

A. Recommend what, Sir?

Q. If he recommends that this person be disciplined, would that recommendation be followed?

A. Depending on the circumstances, yes, there would be obviously a need to evaluate whatever the transgression was before action was taken.

HEARING OFFICER PIETROLUNGO: Would there be any other investigation of the circumstances?

THE WITNESS: Yes. Depending on the issue at hand, yes.

HEARING OFFICER PIETROLUNGO: Who would conduct that investigation?

THE WITNESS: Most likely it would be me.

Q. BY MR. SINGLETON: Most likely, it would be you making this determination of discipline?

A. Yes.

Q. In the past, have you accepted a recommendation?

A. yes. (TR pp. 143, 144)<sup>9</sup>

Aside from the above-described functions, maintenance supervisors spend a majority (75 to 80 percent) of their time in the field actually performing the same work as maintenance technicians.

#### Maintenance Technicians and Porters

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<sup>8</sup> There are no exhibits of written disciplinary records.

<sup>9</sup> I further note that the maintenance supervisor's written detailed job description fails to make mention of any authority either to discipline or to recommend discipline.

For maintenance technicians, the Employer requires a high school diploma and a valid driver's license. In addition, the Employer requires each maintenance technician to maintain certification or license in a skilled trade. The Employer requires technicians performing HVAC work to possess a Type 2 or Universal CFC certification. The Employer requires that maintenance technicians performing plumbing and/ or electrical work possess a journeyman/State License and over three years' experience in the respective field. Similarly, the Employer requires that maintenance technicians performing carpentry work must have over three years' framing and finish experience. Maintenance technicians make on average \$17.50.<sup>10</sup>

For the porter position, the Employer does not require any training, licensing, experience, or other specialized skills.<sup>11</sup> Porters are paid about \$13 per hour on average.

As is discussed above, maintenance technicians and maintenance supervisors actually perform the work maintaining and repairing the homes. They have their own tools and for bigger jobs can use tools provided by the Employer. Maintenance technicians may require the assistance of porters in transporting and carrying various large appliances and equipment to and from jobs at a resident's home. Maintenance technicians, maintenance supervisors, and porters share a common supervisor, the Assistant Director of Maintenance Operations, Steve Smith.

#### Resident Service Specialists and Relocation Specialists

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<sup>10</sup> Calculating the average wage rate of maintenance technicians, I excluded the maintenance supervisor with the lowest wage rate, as his decreased pay reflects the fact that the Employer provides his housing on the base free of charge.

<sup>11</sup> A majority of the porters were originally hired approximately four years ago as painters and plasterers. Then, about two and a half years ago, the Employer made the decision to subcontract out that work. Despite that decision, the Employer retained five of the employees it had originally hired to perform painting and plastering work, and reclassified them as porters, performing non-skilled, general labor work. However, there are still times when the porters do touch-up painting and plastering work.



The Employer requires that resident service specialists must possess a high school diploma or GED equivalent; a valid driver's license; prior experience in customer service positions; competency in Microsoft Office; and outstanding interpersonal skills.

Among the skills and qualifications necessary for the relocation specialist are: a college degree or equivalent industry experience; over two years' property management experience; experience developing and maintaining area market surveys; computer proficiency in Microsoft Office; and a valid driver's license.

Resident service specialists' work is varied. With respect to the repair and maintenance of homes, their primary function is to answer resident calls, e-mails and in-person requests for assistance with issues regarding their homes. Then, they enter the information into a database where a work order is generated. Upon completion of work orders, resident service specialists are responsible for calling the residents to assess resident satisfaction with the work and, if necessary, generate another work order where the work is not completed to satisfaction. Resident service specialists do not attend the weekly safety meeting or the daily morning meeting when work is apportioned as they do not perform any of the actual physical work repairing and maintaining the homes. They do attend the neighborhood team meetings on Fridays, during which employees are given work updates.

Resident service specialists spend much of their time performing other tasks as well, including inspecting homes; actively participating in company-sponsored resident/neighborhood social activities; acting as the welcome contact for new residents; and serving as the point of contact in support of the Family Services Program Manager. Resident service specialists are tasked with various paperwork responsibilities, including

administering move-in paperwork, and maintaining and updating lease documentation and resident responsibility policies and procedures. Approximately two years ago, one maintenance technician transferred into the resident service specialist position.

Aside from the work performed on occupied homes, the Employer also helps ready unoccupied homes for lease to inbound service members. Relocation specialists are charged with establishing and maintaining close contact with the inbound service members to assure smooth transfers to their new homes. They are the primary point of contact for incoming military families and keep them updated as to the assignment of new homes and/or their position on a wait list. The five relocation specialists all work out of the same office that is separate and distinct from the neighborhood offices discussed above. They do not attend the Friday neighborhood team meetings. Prior to the incoming service member's move-in date, the relocation specialist will on occasion walk the vacant home with a maintenance supervisor or technician to assess any work that may need to be done to make the home more habitable. They are also tasked with disseminating all relocation operating policies and procedures. Several of the current relocation specialists transferred from their previous position of resident service specialists.

Neither resident service specialists nor relocation specialists wear uniforms, but both classifications are required to wear professional attire. Relocation specialists are supervised by the relocation manager. Resident service specialists are supervised by the

assistant neighborhood manager. Resident service specialists are paid on average of \$16.95 per hour.<sup>12</sup> Relocation specialists make an average \$16.38 per hour.

### Analysis

#### Supervisory Status

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. *Mississippi Power Co.*, 328 NLRB 965, 969 (1999), citing *Ohio Power v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical or perfunctory manner does not confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). As pointed out in *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in *Hydro Conduit Corp.*: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is

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<sup>12</sup> As was the case with the maintenance supervisor in footnote 6, I have excluded the resident service specialist with the lowest wage from the calculation of average pay as the Employer also provides that individual housing at the base free of charge.

intended to protect." See also *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992).

In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. *Bowne of Houston*, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. *Kentucky River Community Care, Inc.*, 532 U.S. 706, 711 (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. *New Fern Restorium Co.*, 175 NLRB 871 (1969).

I find the Petitioner has not met its burden of establishing that the maintenance technicians are supervisors. The Petitioner relied on three areas of inquiry in support of its assertion that maintenance technicians are supervisors, their authority with respect to disciplining, evaluating, and assigning work of employees.

With respect to the authority of maintenance supervisors to discipline, I find that the Petitioner has failed to carry its burden. The evidence elicited at the hearing merely shows that maintenance supervisors have the authority to report employee conduct to Gayle Filo, the Community Management Director, and that upon receiving those reports, she will conduct her own investigation of the matter. Despite conclusionary testimony that the reports of the maintenance supervisors have in all but a few instances led to some form of discipline, the Petitioner still failed to establish whether any of Ms. Filo's

decisions to take disciplinary action were based purely on the on the reports of maintenance supervisors, or whether all of her decisions were the product of her own investigation. Any lack of evidence in the record is construed against the party asserting supervisory status. See, *Elmhurst Extended Care Facilities*, 329 NLRB 535 (1999). I find that based on the record evidence, the maintenance supervisors' reporting of employee conduct does not rise to the level of effective recommendation of discipline. See, *Williamette Industries*, 336 NLRB 743 (2001).

There is also evidence that maintenance supervisors take part, along with the Assistant Director of Maintenance Operations and the Neighborhood Manager, in evaluating the work of maintenance technicians. However, the Petitioner failed to establish that those evaluations have led either to an increase or decrease in pay, or that the evaluations led to promotions or demotions in employment, or even that the evaluations were in any way considered with regard to such employment actions. See, *Vencor Hospital-Los Angeles*, 328 NLRB 1136 (1999).

Lastly, there was evidence adduced at the hearing that maintenance supervisors assign work to the maintenance technicians and to the porters. The evidence shows that after receiving work orders, the maintenance supervisor delegates the work based on requests by residents to have a specific technician perform the work, and the skills of the individual technicians to perform the work. This evidence fails to establish that maintenance supervisors use independent judgment with respect to the assignment of work. See, *S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996).

Based on the foregoing, I find that with respect to the above-discussed areas of inquiry explored at the hearing, the Petitioner, as the party asserting supervisory status,

has failed to meet its burden in proving that the maintenance technicians have the authority to discipline, effectively recommend discipline, promote, or use independent judgment when they assign or direct other employees. *Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001). Therefore, I find that the maintenance technicians are not supervisors within the meaning of Section 2(11) of the Act.

Community of Interest

Section 9(b) of the Act states the Board “shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof....” The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be “appropriate.” *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192, fn. 1; *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf’d. 190 F.2d 576 (7<sup>th</sup> Cir. 1951).

It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10th Cir. 1962). The petitioning union's choice of a unit is always a relevant consideration, but the union's choice cannot be dispositive. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). Community of duties and interests of the employees involved is the major determinant. *Swift Co.*, 129 NLRB 1391 (1960). If there is a sufficient community of interest among

employees, the fact that groups of employees have different duties and responsibilities does not make a combination of those employees inappropriate. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963). Relevant considerations include: (a) the degree of functional integration among the employee classifications; (b) common supervision; (c) nature of employee skills and functions; (d) interchange and contact among employees; (e) work sites; (f) general working conditions; and (g) fringe benefits.

Applying the factors above to the facts developed on the record in this case, I find that the maintenance supervisors, maintenance technicians, and porters constitute an appropriate unit for bargaining. There is regular daily contact among those three classifications of employees. Each morning, maintenance supervisors meet with the maintenance technicians and porters to discuss and assign work to be performed that day.<sup>13</sup> Those three classifications of employees then meet once a week, every Wednesday, with the Director and Assistant Director of Maintenance to discuss safety issues on the job. Relocation specialists and resident service specialists do not attend those meetings.

Maintenance supervisors spend 75 to 80 percent of their time actually performing the same work as the maintenance technicians, completing work orders repairing and maintaining homes on the base. Porters regularly assist the maintenance technicians and maintenance supervisors carry heavy equipment and appliances to and from residences. These three classifications of employees are the only ones who actually perform the physical labor involved with completing work orders. The Employer requires that maintenance technicians and supervisors possess technical skills in, among other things,

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<sup>13</sup> They are also the only employees in attendance at weekly safety meetings conducted by the Director and Assistant Director of Maintenance.

plumbing, electrical, and HVAC work. Further setting maintenance supervisors, maintenance technicians, and porters apart from the other classifications of workers in a visual way, is the fact that they are the only employees who wear the company uniform consisting of navy blue pants and a navy blue shirt with the company logo.

I find that resident service specialists do not share such a close community of interest with the maintenance supervisors, maintenance technicians, and porters, that they must be included in the petitioned-for unit. Among the primary skills and qualifications the Employer requires of resident service specialists are strong customer service skills, previous experience in property management, and computer skills. Resident service specialists do not wear uniforms; rather, they wear professional attire. I also note that the resident service specialists' supervisor is the Assistant Neighborhood Manager, while the classifications included in an appropriate unit report to the Assistant Director of Maintenance Operations.

As is discussed above, with respect to the repair and maintenance of homes, resident service specialists simply answer resident calls, e-mails, and in-person requests for assistance with issues regarding their homes. Then, they merely enter the information into a database where a work order is generated. Upon completion of the work orders, resident service specialists are responsible for calling the residents to assess resident satisfaction with the work and, if necessary, generate another work order where the work is not completed to satisfaction. Beyond those clerical, customer-service oriented duties, the evidence shows that resident service specialists do not attend the daily morning meetings where the actual work is delegated; they do not attend the safety meetings where concerns about how to safely perform the work are discussed; and they do not



perform any of the physical work repairing and maintaining the homes.<sup>14</sup> In fact, resident service specialists spend much of their time performing tasks unrelated to the repair and maintenance of homes. For example, as was discussed above, they actively participate in company-sponsored resident/neighborhood social activities; they act as the welcome contact for new residents; and serve as the point of contact in support of the Family Services Program Manager. Resident service specialists are also tasked with various paperwork responsibilities, including administering move-in paperwork, maintaining and updating lease documentation, and resident responsibility policies and procedures. Finally, there is no meaningful interchange between the resident service specialists and the bargaining unit classifications.

The Employer cites *ABS Corp.*, 299 NLRB 516 (1990), where the Board found that an order entry clerk at a printing company whose primary job was to open and sort mail from customers ordering checks, was responsible for initiating the physical printing process. The Board found that the job duties of the order entry clerk were akin to a plant clerical employee, and therefore she should be included in a unit of production and maintenance employees. *Id.* The facts relied on in that case are distinguishable for those in the instant case. In that case, the order entry clerk was separated from any actual interaction with customers. Her responsibilities consisted solely of opening and sorting the mail from customers ordering that checks be printed. In the instant matter, although the resident service specialists do generate work orders, that is only one aspect of their

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<sup>14</sup> The Employer argues that each member of the five classifications perform tasks that are similar in nature, using substantially the same tools. This is clearly not the case, as the evidence is undisputed that maintenance technicians and maintenance supervisors are the only two classifications of employees to use tools necessary to perform maintenance and repair work. And, the evidence is also clear that porters are the only ones to occasionally use tools to paint and do light touch-up plastering work. As far as tools of the trade used by resident specialists and relocation specialists, the only evidence here is that they use their computers to enter various data relating to work orders, customer satisfaction, leasing information, etc.

jobs. Much of their time is spent directly communicating with the residents and determining customer satisfaction. As is also discussed above, resident service specialists are responsible for actively participating in company-sponsored resident-neighborhood social events, acting as the welcome contact for new residents, administering move-in paperwork, maintaining and updating lease documents, etc.

The Employer also cites the Board's decision in *Hamilton Halter Co.*, 270 NLRB 331 (1984), where it found that two clerical employees job duties were such that they should be considered plant clericals and thus should be included in a unit of production and maintenance employees. *Id.* In that case, the evidence demonstrated that the clericals spent about 95 percent of their time in their office handling customer orders, taking information from customers on the telephone, and transferring the information to invoices. In addition, they maintained inventories, order supplies, and collected employee timecards. In the instant case, the resident specialists spend only about one-half of their time in the office. That time in the office is divided between generating work orders, the duty typically associated with a plant clerical employee, and maintaining and updating paperwork, including lease documents. The rest of their time is spent out in the field, inspecting homes, participating in neighborhood social events, and acting as contacts for new residents.

The resident service specialists are more akin to the receptionists discussed in *Shannon & Luchs*, 162 NLRB 1382 (1967), than they are to the plant clericals discussed above. In *Shannon & Luchs*, the Board found that receptionists employed by an employer who owns an apartment complex did not share a sufficient community of interest with "blue collar" workers to warrant inclusion in the bargaining unit. In that

case, among their duties, receptionists wrote up work orders for requested repairs and turned them over to the porters and maintenance workers for completion, and they showed apartments to potential tenants. The Board found that receptionists should not be included in a bargaining unit that included employees whose jobs consisted of maintenance work.

Similarly, I find that relocation specialists do not share such a close community of interest with employees in the unit found appropriate that they must be included in the unit. Relocation specialists work out of a different office altogether from the other classifications. The Employer requires that relocation specialists have earned a bachelor's degree or equivalent industry experience. Similar to the resident service specialists, relocation specialists wear professional attire, not the navy blue uniforms required of the maintenance supervisors, maintenance technicians, and porters. A unique requirement of the relocation specialists is experience developing and maintaining market surveys, clearly a skill not required of the maintenance supervisors, maintenance technicians or porters. As is true with resident service specialists, relocation specialists are the only other classification of employee whom the Employer requires possess strong computer skills. Additionally, their supervision is distinct from other classifications, as they report to the Relocation Manager.

Among their primary responsibilities, relocation specialists must possess strong customer service skills, establishing and maintaining close ties with the inbound service members. Relocation specialists act as the point of contact for the new residents and work to ensure a smooth transition into their new homes. None of the responsibilities for the relocation specialists require technical skills that would allow them to make repairs or

to maintain the homes. Aside from brief walk-throughs with maintenance technicians and supervisors to assess the habitability of the homes for the inbound service members, relocation specialists have little contact with those other classifications.

The Employer argues that because the ultimate goal of all five classifications of employees is to ensure the best possible family experience for neighborhood residents, and because relocation specialists will at times assess work to be done on a particular home, it “follows naturally that the employees have the same or similar skills and training” and that, therefore, all five classifications operate as a team. The Employer cites *United Rentals, Inc.*, 341 NLRB 540 (2004), where the Board found that despite the different function of several classifications of employees, including mechanics, drivers, yard employees counter employees, parts associate, inclusion of all those classifications of employees in a single unit is appropriate because of the overlapping duties and interchange of the classifications. The facts in that case revealed that each classification regularly performed the functions of other classifications. For example, in that case, counter employees whose main job function was related to traditional customer service, also regularly used the employer’s pick-up trucks to make deliveries; loaded and unloaded the trucks on a daily basis; and even repaired a number of pieces of equipment. *Id.* That degree of overlapping function and skills is not present in the instant matter, where only the maintenance supervisors, maintenance technicians, and porters actually do the physical labor required for home repair and maintenance.

Based on the foregoing, I find that the petitioned-for unit, including maintenance supervisors, is an appropriate unit.

At the hearing the Petitioner stated its willingness to proceed to an election in any unit found appropriate. Since the unit that I find appropriate is broader than the petitioned-for unit, the Petitioner is granted fourteen (14) days from the date of this Decision to make an adequate showing of interest, if necessary. Should the Petitioner not wish to proceed to an election in the broader unit it will be permitted, upon request, to withdraw its petition without prejudice.

### **CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. Petitioner, International Union of Operating Engineers, Local 37, AFL-CIO, a labor organization as defined in Section 2(5) of the Act, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated that Picerne Military Housing, LLC, is a limited liability corporation, with an office and place of business at Fort Meade, Maryland. It provides facility management services to the United States Army at various locations throughout the United States, including its Fort Meade, Maryland location. During the preceding 12 months, a representative period, the Employer provided \$50,000 in services to the United States Army and purchased and received at its Fort Meade, Maryland facility products, goods, and materials valued in excess of \$5,000 directly from points located outside the State of Maryland.

6. I find, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All maintenance supervisors, maintenance technicians, and porters employed by the Employer at its Fort Meade, Maryland facility, excluding relocation specialists, resident service specialists, office clerical employees, guards, and supervisors as defined by the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by

**INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 37,**

**AFL-CIO.** The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the

election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **June 6, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all

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parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **D. Notice of Electronic Filing**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, D.C. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov)



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**E. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **June 13, 2006**. The request may not be filed by facsimile.



/s/ Wayne R. Gold

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Wayne R. Gold, Regional Director  
National Labor Relations Board, Region 5  
103 S. Gay Street  
Baltimore, MD 21202

Dated: **May 30, 2006**